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Professor REEVES. Mr. Chairman, Subcommittee No. 4 begs to apologize for presenting a rough and very informal report, for the reason that—the excuse is, rather, that its discussion continued to such a late hour this afternoon that there was no opportunity offered in the interim to reduce its conclusions, however small, to writing.

REPORT OF SUBCOMMITTEE NO. 4

OFFENSES WHICH MAY BE CHARACTERIZED AS INTERNATIONAL CRIMES AND PROCEDURE FOR THEIR PREVENTION

PRESENTED BY PROFESSOR JESSE S. REEVES, CHAIRMAN

Mr. Chairman, ladies and gentlemen: I may say at the outset that there developed almost immediately among the minds of the various members of the committee some dissatisfaction with the nature of the topic presented to the committee as the subject of its labors,—the general scope of Subcommittee No. 4 being to consider the subjects not now adequately regulated by international law, but to which the interests of international justice require that rules of law should be declared and accepted; and for the purposes of this meeting this title was limited to those "Offenses which may be characterized as international crimes and procedure for their prevention." Nevertheless, the subcommittee proceeded to consider this restricted topic, which, as it opened out in discussion, appeared to be extremely difficult.

There first appeared a difficulty as to the conception of an international crime. That conception as ordinarily set forth in text books of international law, upon investigation and discussion, seemed not to set forth an international crime in a strict sense, but rather an offense recognized by international usage as "international" largely because of its universality. For instance, the making of the slave trade piracy by international agreement, or later those acts denounced under the white slave convention, such acts to be punished as crimes in accordance with the municipal legislation of each of the Powers signatory to the convention. We did not think, harking back to the recommendations of the Committee of Jurists assembled at The Hague, that this general type of offense was particularly in mind. Rather the subcommittee's work involved the consideration of certain acts to be designated as crimes, international in a strict sense, for obviously those offenses by individuals that had been denounced by international conventions, such as the convention with reference to the white slave traffic, are not, strictly speaking, international. In other words, they do not involve the acts of persons in international law. We therefore were compelled to put this large and growing group of offenses to one side, not because of any lack of intrinsic importance therein, but because it hardly

fell, in the mind of the subcommittee, within the strict range of public international law, especially in the light of the suggestion to which I referred, made by the Committee of Jurists at The Hague.

Therefore, we were faced with the desirability of considering international crime in the strict sense, and, after full discussion, we came to the conclusion that not until the adoption of the Declaration of Washington had there been, strictly speaking, an international crime, having due regard both to the word "international" and to the concept of crime. The Declaration of Washington, therefore, introduced quite a new conception and item of terminology into public international law. I may be allowed perhaps to refresh your recollection by rehearsing the phraseology of Article III of the Washington declaration:

The signatory Powers, desiring to insure the enforcement of the humane rules of existing law declared by them with respect to attacks upon and the seizure and destruction of merchant ships, further declare that any person in the service of any Power who shall violate any of those rules, whether or not such person is under orders of a governmental superior, shall be deemed to have violated the laws of war and shall be liable to trial and punishment as if for an act of piracy, and may be brought to trial before the civil and military authorities of any Power within the jurisdiction of which he may be found.

This is an unprecedented expression, in the opinion of the subcommittee, in international agreements. Take the Declaration of Paris for instance: It provides that "privateering is and remains abolished," but privateering is not thereby made a crime. For while it is abolished, no penalties are fixed for its commission. Nor anywhere, excepting in the *ex post facto* provisions of the Versailles Treaty, do we find that a person acting under the orders of a governmental superior shall be designated as a criminal, notwithstanding the cloak of such authority. Therefore, this points the way, opens the door, for an altogether different method of handling certain offenses, which are, strictly speaking, international, and are by the signatories to the convention denominated as crimes with a penalty affixed. For, heretofore, when one international person commits a wrong against another international person, the theory of international law has been that at most it is in the nature of a tort and not a crime; that, as in the days of old within the state when self-help might follow and punishment thereby entailed, the act was not, strictly speaking, a crime.

The question next presented was as to what other types of offenses might be similarly designated and penalties set forth by similar separate international agreements. That, we have not had time, I may frankly add, to consider.

Again the question arose as to the liability of nationals, committing such acts, of those Powers not signatory to such an international convention. Notwithstanding the phraseology of this Declaration of Washington,

I think the subcommittee was not in agreement. There was considerable difference in opinion.

Then as to the nature of a court having jurisdiction over this type of offenses, we had only an opportunity merely to look into the matter, and certain divergences of opinion at once disclosed themselves.

The subcommittee is not sufficiently egotistic to think that it labored as a great mountain; it is rather fearful that you will think that only a mouse of result was brought forth. We were considerably impressed with the difficulties of this subject and somewhat overwhelmed with the novelty of the situation. While, in the development of municipal law, very slowly criminal law emerged out of a law involving only private rights and wrongs, in the old days in the development of municipal law, in the days of self-help, before criminal law developed, there was a liability both individual and group; but it was not a criminal liability. But with the development of criminal law within the state, the group liability was broken apart and the individual reached, and an analogous development takes place when international law begins to make that same change which took place ages ago in the development of municipal criminal law, for a criminal law must eventually reach the person, the individual, through the group if necessary. It would seem, therefore, that the statement and the provision of the Declaration of Washington opens up the possibility of reaching the person and fastening the criminal fault upon him, notwithstanding the cloak of authority of the group which he represents.

Mr. CHARLES HENRY BUTLER. Mr. Chairman, before adjournment, I would like to remind this audience, those who were not here this morning, of the very appropriate and eloquent remarks which our President made, while presiding over the Committee on Advancement of International Law, in regard to the death of our dear and honored friend, Lord Bryce. I now wish to make a formal motion that the remarks of President Root before the Committee of the Society on the Advancement of International Law, at the meeting of the morning of April 28, in regard to the death of Lord Bryce, shall be transferred to the formal minutes of this meeting, as though they had been made in the meeting of the Society as a whole. I wish to read these resolutions:

Resolved, That the remarks of President Root at the Committee on the Advancement of International Law at its meeting on April 28 be transferred to the minutes of this meeting of the Society as though made thereat.

Resolved, That the American Society of International Law has heard with sincere sorrow of the death of Lord Bryce and that the Secretary be instructed to transmit to Lady Bryce the remarks of Mr. Root, President of the Society, on the subject of Lord Bryce's accomplishments, and to tender her the sincere sympathy of the members of the Society and expression of their appreciation of those high attributes

of character possessed by her illustrious husband, which not only gained for him the respect and admiration, but also the affection of his many friends in the United States, who now unite with his fellow countrymen in mourning the loss of one of the greatest citizens of the English speaking world.

The CHAIRMAN. Ladies and gentlemen: You have heard the resolutions, which have been duly seconded. If there is no discussion, I will now put them, and I will ask for a rising vote.

The resolution was put and the entire membership rose *en masse*.

The CHAIRMAN. The resolution is unanimously carried.

Mr. BUTLER. Mr. Chairman, I now offer the following resolutions:

Resolved, That the American Society of International Law has heard with deep regret of the death on October 12, 1921, of the Honorable Philander Chase Knox, United States Senator from Pennsylvania and formerly Secretary of State of the United States, and since 1909 one of the Vice Presidents of this Society, and the Secretary be instructed to convey to Mrs. Knox the expression of the sincere sympathy of the members of the Society and of their appreciation of the great service which he has rendered in upholding the principles of international law, and of the great loss which has been sustained in the death of this eminent jurist.

Resolved, That the American Society of International Law has heard with deep regret of the death on May 19, 1921, of the Honorable Edward Douglas White of Louisiana, Chief Justice of the United States and since 1911 one of the Vice Presidents of the Society, and the Secretary be instructed to convey to Mrs. White the expression of the sincere sympathy of the members of the Society and of their appreciation of the services which he has rendered in upholding the principles of international law, and of the great loss that has been sustained in the death of one of the most eminent jurists of this country.

Resolved, That the American Society of International Law has heard with deep regret of the death on May 29, 1921, of General Horace Porter of New York, one of the founders of the Society and one of its Vice Presidents since its organization, and that the Secretary be instructed to convey to the members of his family the expression of sincere sympathy of the members of the Society and of their appreciation of the great services which he rendered as Ambassador of the United States to France and as an ambassadorial delegate to the Second Peace Conference at The Hague in upholding the principles of international law, and of the great loss which has been sustained in his death.

The CHAIRMAN. You have heard the resolutions in regard to the three deceased Vice-Presidents of the Society. Are the resolutions seconded?

Mr. FRANCIS W. AYMAR. I second the resolutions.

Whereupon the presiding officer put the resolutions to a rising vote, and the members rose *en masse*.

The CHAIRMAN. They are unanimously carried.

Tomorrow morning at the meeting at ten o'clock there will be a discussion and action by the Society upon the reports of the subcommittees for the advancement of international law. Then there will be a business meeting of the Society and a meeting of the Executive Council.

I would suggest that the Nominating Committee meet for a few minutes at once after adjournment tonight.

Adjournment is now in order. There is no further business, and the meeting is adjourned.

Whereupon the session adjourned at 11.15 o'clock p.m.